Supreme Court, U.S.
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No. 91-1256

In The

Supreme Court of the United States

October Term, 1991

CHARLES KLAVONICK,

Petitioner,

vs.

THE IRONWORKERS OF WESTERN PENNSYLVANIA BENEFIT PLANS and THE BOARD OF TRUSTEES OF THE IRONWORKERS OF WESTERN PENNSYLVANIA BENEFIT PLANS,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JEFFREY J. LEECH, ESQUIRE
(Counsel of Record)
DIANE HERNON CHAVIS, ESQUIRE

TUCKER ARENSBERG, P.C.
1200 Pittsburgh National Bldg.
Pittsburgh, PA 15222
(412) 566-1212

Counsel for Respondents

QUESTION PRESENTED

Whether in an action challenging the denial of disability pension benefits pursuant to Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1132(a)(1)(B), where the parties agree that the arbitrary and capricious standard is controlling, the district court and the Court of Appeals correctly determined that the decision to deny benefits was supported by substantial evidence and the plain language of the Plan.

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STATEMENT OF THE CASE

Petitioner Charles Klavonick (hereinafter "Klavonick") filed a Complaint against Respondents,[1] the Ironworkers of Western Pennsylvania Benefit Plans and the Board of Trustees of the Ironworkers of Western Pennsylvania Benefit Plans (hereinafter collectively "the Trustees"), alleging that the Trustees violated the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et seq. (hereinafter "ERISA"), when they denied Klavonick's application for regular disability pension benefits. In their Answer, the Trustees averred that the medical evidence as a whole did not establish that Klavonick was totally and permanently disabled as required by the Ironworkers of Western Pennsylvania Pension Plan (hereinafter "the Plan"). The Trustees also averred that Klavonick's receipt of Workers' Compensation benefits had no bearing on his eligibility for disability benefits under the Plan.

From 1947 until 1982, Klavonick was a member of Ironworkers Local Union No. 3 and became a participant in the Plan. (Appendix to Petition for Writ of Certiorari ["App."] 2a). Klavonick applied for a regular disability pension on March 4, 1983, alleging total disability as of November 12, 1982. (App. 2a).

Section 3.10 of the Plan sets forth the eligibility requirements for disability pension claimants. To qualify

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[1] Neither the Ironworkers of Western Pennsylvania Benefit Plans nor the Board of Trustees of the Ironworkers of Western Pennsylvania Benefit Plans are corporate entities.

for benefits, a participant must have a total and permanent occupational disability resulting in his or her inability to engage in any further gainful employment as a construction worker. Section 3.10 provides, in pertinent part:

> (a) Regular Disability Pension.
>
> A Participant may retire on a Regular Disability Pension if:
>
> (i) he becomes permanently and totally disabled prior to age 65 . . .
>
> In order to qualify for a Regular Disability Pension, a Participant must provide medical evidence of total and permanent disability so as to be prevented from engaging in any further gainful employment as a construction worker, and have been totally disabled for at least one month. (App. 2a).

The Plan also defines *when* such disability benefits are to commence. In particular, Section 3.12 of the Plan provides:

> Payments of the Disability Benefit shall commence as provided in Sections 7.01 and 7.02 but no sooner than the beginning of the first month after the month in which disability begins and shall continue thereafter for so long as the recipient of the Disability Benefit remains totally and permanently disabled as herein defined . . . Notwithstanding the foregoing, in the event that a Participant is found to be entitled to a Worker's Compensation award, the Disability Pension for such participant shall commence on the first day of the 13th month of total disability. (App. 2a).

In conjunction with his application for benefits, Klavonick was examined by six physicians, three of whom he selected and three of whom were selected by the Trustees.[2] (App. 2a). Three physicians addressed the precise question of whether Klavonick was occupationally disabled pursuant to Section 3.10 of the Plan. (App. 2a). Two of the three doctors concluded that Klavonick was not so disabled, while Klavonick's own physician concluded that he was. (App. 2a). The other three physicians did not address the occupational disability standard contained in Section 3.10 of the Plan. (App. 2a).

On May 13, 1983, the Trustees denied Klavonick's disability pension application. However, the Trustees approved a reduced early pension for Klavonick in the amount of $732.50 per month, effective April 1, 1983. (App. 2a).

On October 17, 1984, a Workers' Compensation referee, based solely upon the testimony of Klavonick and his treating physician, determined that Klavonick was disabled under the Pennsylvania Workers' Compensation Act as a result of work related injuries and awarded him benefits. (App. 2a).

Following the Workers' Compensation proceeding, Klavonick appealed the denial of pension benefits. After

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[2] Section 3.10 of the Plan also provides that the Trustees may require a medical examination by physicians retained by the Trustees in order to obtain an independent certification as to a claimant's total and permanent disability.

reconsidering Klavonick's request for disability benefits, the Trustees upheld the denial of benefits.

Klavonick subsequently commenced this lawsuit whereupon the parties filed cross motions for summary judgment. (App. 2a). The district court granted the Trustees' motion and denied Klavonick's motion.[3] (App. 2a). The United States Court of Appeals affirmed the district court's judgment. (App. 2a).

SUMMARY OF THE ARGUMENT

Review pursuant to a Writ of Certiorari is a matter of discretion rather than of right. Cases such as this which are merely significant to the private litigants rather than the public should not be reviewed, particularly where, as here, special and important reasons for review are non-existent.

Certiorari should be denied in any event because both the Court of Appeals and the district court properly determined that the denial of Klavonick's request for disability pension benefits was supported by substantial evidence and the plain language of the Plan.

[3] Initially, the Honorable Paul A. Simmons granted Klavonick's summary judgment motion and denied the Trustees' motion. The Trustees thereafter filed a Motion for Reconsideration. The case was subsequently reassigned to the Honorable Alan N. Bloch who granted the Trustees' Motion for Reconsideration and the Trustees' Motion for Summary Judgment and denied Klavonick's Motion for Summary Judgment.

ARGUMENT

I. There Are No Special Or Important Reasons for Granting Certiorari In This Case.

Review upon writ of certiorari is not a question of right but, rather, is a matter of judicial discretion. Sup. Ct. R. 10. Review is granted only when special and important reasons exist. " 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955)(decided under the similar provisions of former Sup. Ct. R. 19).

In *Rice*, this Court illustrated what may be deemed "special and important":

> A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. *Id.* at 74.

Similarly, in *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387 (1923), this Court stated:

> . . . [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal. *Id.* at 393.

In the present case, no special or important reasons exist for granting certiorari. This case does not involve a matter of importance to the public. Rather, the issue is the interpretation of a single plan as it affects a solitary litigant's right to benefits.

Similarly, this case does not involve a "real and embarrassing conflict of opinion and authority" between the circuits. *Id.* at 393. The parties agree that the Plan confers discretion upon the Trustees to determine eligibility for benefits and to construe the terms of the Plan. (App. 2a). Thus, Klavonick's challenge to the denial of benefits was reviewable by the district court under the arbitrary and capricious standard. *See Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 112 (1989). Consistent with *Firestone* and with the other circuit court decisions since *Firestone*, the Third Circuit applied the arbitrary and capricious standard. There is no conflict of opinion and authority between the circuits.

II. Certiorari Should Be Denied In Any Event Given That Both The Court Of Appeals And The District Court Correctly Decided This Matter.

A. Both The Court Of Appeals And The District Court Correctly Determined That The Trustees' Decision Was Based Upon Substantial Evidence And The Plain Language Of The Plan.

In *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. at 112, this Court held that where a plan confers discretionary authority on the administrator or fiduciary to determine eligibility for benefits or to construe the terms of the

plan, a denial of benefits challenged under 29 U.S.C. §1132(a)(1)(B) is to be reviewed under the arbitrary and capricious standard. The parties to this matter agree that the Plan confers discretion on the Trustees to determine benefit eligibility and to construe the terms of the Plan. (App. 2a).[4]

In affirming the judgment of the district court, the Third Circuit noted that under the arbitrary and capricious standard, the district court, or the Court of Appeals when exercising plenary review, may reverse the Trustees' decision only if the decision is arbitrary, capricious, or irrational, or it employs improper standards or procedures. (App. 2a). *See also Pennsylvania v. Local Union 542, Int'l Union of Operating Engineers*, 807 F.2d 330, 334 (3d Cir. 1986).

The Trustees concluded that Klavonick was not totally and permanently disabled within the meaning of the Plan only after considering the reports of six physicians, three of whom expressly addressed the occupational disability provision contained in the Plan. (App. 2a). Two of the three physicians concluded that Klavonick was not totally and permanently disabled so as to be prevented from engaging in any further gainful employment as a construction worker. (App. 2a). Only Klavonick's personal physician concluded that he was. (App. 2a).

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[4] Section 7.03 of the Plan provides, in pertinent part:

> The Trustees shall be the sole judges of the standard of proof required in any case and of the application and interpretation of this Plan, and the decisions of the Trustees shall be final and binding on all parties. (App. 2a).

A decision is based on substantial evidence and, therefore, not arbitrary and capricious where there are at least two medical reports which support it, even if there is another medical report which contradicts it. (App. 2a). Having reviewed the record, both the district court and the Court of Appeals concluded that the Trustees' decision denying Klavonick a regular disability pension was based upon substantial evidence and, therefore, the decision was not arbitrary and capricious.

B. Both The Court Of Appeals And The District Court Correctly Determined That The Trustees' Interpretation Of Section 3.12 Of The Plan Was Proper.

In the Petition for Writ of Certiorari, Klavonick argues that the Trustees acted arbitrarily and capriciously in interpreting Section 3.12 of the Plan. Klavonick was awarded Workers' Compensation benefits on October 17, 1984 and argues that he became entitled to a regular disability pension as a result of the Workers' Compensation award. Both the Court of Appeals and the district court rejected this interpretation. (App. 2a).

The issue is the plain meaning of Section 3.12 of the Plan. However, interpretation of Plan provisions is within the province of the Trustees. *Gaines v. Amalgamated Ins. Fund*, 753 F.2d 288, 289 (3d Cir. 1985); *McHugh v. Teamsters Pension Fund of Philadelphia*, 638 F. Supp. 1036, 1041 (E.D. Pa. 1986). When evidence before the Trustees supports two reasonable but conflicting conclusions, courts defer

to the Trustees' judgment and affirm their decision. *Bali v. Blue Cross and Blue Shield Ass'n*, 683 F. Supp. 1220, 1222 (N.D. Ill. 1988), *aff'd*, 873 F.2d 1043 (7th Cir. 1989).

Section 3.12 is not an eligibility provision, as the section has nothing whatsoever to do with the initial determination of whether a claimant is totally and permanently disabled. Rather, Section 3.12 speaks to when disability benefits shall commence in the event that a claimant meets the eligibility requirements of Section 3.10 and is also awarded Workers' Compensation benefits.[5]

Contrary to Klavonick's interpretation, the last sentence of Section 3.12 does *not* eliminate or supersede the Trustees' discretionary authority to determine questions of eligibility. Moreover, a Workers' Compensation finding of disability is not a de facto finding of disability under the Plan. (App. 2a). Thus, the Court of Appeals and the district court were correct in their determinations.

The Trustees are empowered to decide all questions relating to the eligibility of employees for benefits under

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[5] The logical purpose behind Section 3.12 is to delay the payment of disability benefits for a period of twelve months for claimants who are already receiving wage replacement benefits. Conversely, claimants who are not involved in a work related disability but who are disabled under the Plan receive immediate disability payments.

Klavonick's interpretation of Section 3.12 is irrational. The Plan would make little sense if the Trustees could require claimants to undergo independent medical exams to establish benefit eligibility but, simultaneously, have their decision overridden in a Workers' Compensation proceeding to which they are not even parties.

the Plan and to decide the amount and kind of benefit.[6] Pursuant to Section 3.10, the Trustees are empowered to determine a claimant's benefit eligibility. A Workers' Compensation determination, therefore, cannot and does not foreclose the Trustees from making their own disability determination under the Plan. Consequently, both the district court and the Court of Appeals properly rejected Klavonick's interpretation of Section 3.12.

CONCLUSION

No special or important reasons exist for granting certiorari in this case. The Trustees' decision denying Klavonick a regular disability pension was supported by substantial evidence and by the plain language of the Plan. The Court of Appeals and the district court correctly determined that the Trustees did not act arbitrarily

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[6] Article IV, Section 3(q) of the Plan's Agreement and Declaration of Trust provides that the Trustees are empowered:

> To decide all questions relating to the eligibility of Employees for benefits under the Plan, and to decide the amount and kind of payments to such persons entitled to benefits, and the rights of the members of the Plan with respect to this Trust.

and capriciously in any respect. Accordingly, Klavonick's petition seeking a writ of certiorari should be denied.

Respectfully submitted,

JEFFREY J. LEECH, ESQUIRE
(Counsel of Record)
DIANE HERNON CHAVIS, ESQUIRE
TUCKER ARENSBERG, P.C.
1200 Pittsburgh National Bldg.
Pittsburgh, PA 15222
(412) 566-1212
Counsel for Respondents